

Public Chapter 437

HOUSE BILL NO. 370

By Representatives Kent, Buck, McMillan, Jackson, Hargrove, Sands, Ritchie, Westmoreland, Newton, Stamps, Roach, McDaniel, Godsey, Mumpower, Walley, Halteman Harwell, McDonald, Fitzhugh, Bittle, Maddox, Stulce, Brenda Turner, Goins, Beavers, Scroggs, Hargett, Pinion, Hassell, Pleasant, Haley and Mr. Speaker Naifeh

Substituted for: Senate Bill No. 1216

By Senators Kyle, Springer, Atchley, Burks, Carter, Cohen, Cooper, Crowe, Crutchfield, Davis, Dixon, Elsea, Ford, Fowler, Graves, Harper, Haun, Haynes, Henry, Herron, Jordan, Koella, Kurita, Leatherwood, McNally, Miller, Person, Ramsey, Rochelle, Williams, Womack and Mr. Speaker Wilder

AN ACT to amend Tennessee Code Annotated, Title 39 and Title 40, relative to the punishment of certain offenders.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 35, Part 1, is amended by adding the following new section to be designated as 40-35-121.

40-35-121. Criminal Gang Offenses -- Enhanced Punishment -- Procedure. -

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(a) As used in this section unless the context otherwise requires:

(1) "Criminal gang" means a formal or informal ongoing organization, association, or group consisting of three (3) or more persons that has:

(A) As one (1) of its activities the commission of criminal acts; and

(B) Two (2) or more members who, individually or collectively, engage in or have engaged in a pattern of criminal gang activity;

(2) "Criminal gang member" is a person who is a member of a criminal gang, as defined in subdivision (1) of this subsection, and who meets two (2) or more of the following criteria:

(A) Admits to criminal gang involvement;

(B) Is identified as a criminal gang member by a parent or guardian;

(C) Is identified as a criminal gang member by a documented reliable informant;

(D) Resides in or frequents a particular criminal gang's area, adopts their style or dress, their use of hand signs or their tattoos, and associates with known criminal gang members;

(E) Is identified as a criminal gang member by an informant of previously untested reliability and such identification is corroborated by independent information;

(F) Has been arrested more than once in the company of identified criminal gang members for offenses which are consistent with usual criminal gang activity; or

(G) Is identified as a criminal gang member by physical evidence such as photographs or other documentation;

(3)

(A) "Pattern of criminal gang activity" means prior convictions for the commission or attempted commission of, or solicitation or conspiracy to commit:

(i) Two (2) or more criminal gang offenses that are classified as felonies; or

(ii) Three (3) or more criminal gang offenses that are classified as misdemeanors; or

(iii) One (1) or more criminal gang offense that is classified as a felony and two (2) or more criminal gang offenses that are classified as misdemeanors; and

(iv) The criminal gang offenses are committed on separate occasions; and

(v) The criminal gang offenses are committed within a five (5) year period.

(B)

(i) As used in this subsection "prior conviction" means a criminal gang offense for which a criminal gang member was convicted prior to the commission of the instant criminal gang offense by the defendant and includes convictions occurring prior to July 1, 1997.

(ii) "Prior conviction" includes convictions under the laws of any other state, government, or country which, if committed in this state, would have constituted a criminal gang offense. In the event that a conviction from a jurisdiction other than Tennessee is not specifically named the same as a criminal gang offense, the elements of the offense in the other jurisdiction shall

be used by the Tennessee court to determine if such offense is a criminal gang offense.

(iii) Convictions for multiple criminal gang offenses committed as part of a single course of conduct within twenty-four (24) hours are not committed on "separate occasions". However, acts which constitute criminal gang offenses under subsection (4)(A) of this section shall not be construed to be a single course of conduct;

(4) "Criminal gang offense" means any violation of Tennessee law:

(A) During the perpetration of which the defendant knowingly causes, or threatens to cause, death or bodily injury to another person or persons and specifically includes rape of a child, aggravated rape and rape; or

(B) That results, or was intended to result, in the defendant receiving income, benefit, property, money or anything of value from the illegal sale, delivery or manufacture of a controlled substance or firearm.

(b) A criminal gang offense committed by a defendant who was a criminal gang member at the time of such offense shall be punished one (1) classification higher than the classification established by the specific statute creating the offense committed.

(c) A criminal gang offense committed by a defendant who was not a criminal gang member at the time of such offense but who committed such offense for the purpose of and with the intent to fulfill an initiation or other requirement for joining a criminal gang as defined in subsection (a)(1) of this section shall be punished one (1) classification higher than the classification established by the specific statute creating the offense committed.

(d) If the criminal gang offense subject to enhancement under subsection (b) or (c) is a Class A felony, the presumptive sentence for such offense shall be the maximum sentence within the range from which the defendant is to be sentenced.

(e) A criminal gang offense committed by a defendant who was a criminal gang member at the time of such offense shall be punished two (2) classifications higher than the classification established by the specific statute creating the offense committed if the criminal gang member was also a leader or organizer of the criminal gang at the time the offense was committed.

(f) If the criminal gang offense subject to enhancement under subsection (e) is a Class A or B felony, the criminal gang member shall be sentenced as a Class A felon and the presumptive sentence for such offense shall be the maximum sentence within the range from which the defendant is to be sentenced.

(g) If the defendant is charged with a criminal gang offense and the District Attorney General intends to seek enhancement of the punishment under subsections (b), (c) or (e), the indictment, in a separate count, shall specify,

charge and give notice of the subsection under which enhancement is alleged applicable and of the required prior convictions constituting such gang's pattern of criminal gang activity.

(h) If the defendant is convicted of the underlying criminal gang offense, the jury shall then separately consider whether the defendant was at the time of the offense:

(1) A criminal gang member;

(2) A criminal gang member and a leader or organizer of the gang; or

(3) Not a criminal gang member but committed the offense for the purpose of joining a criminal gang.

If the jury convicts the defendant under subpart (1), (2) or (3) of this subsection, the court shall pronounce judgment and sentence the defendant as provided in this section.

SECTION 2. Tennessee Code Annotated, Section 39-11-106, is amended by deleting subsection (a)(36) in its entirety.

SECTION 3. Tennessee Code Annotated, Section 40-35-114, is amended by deleting subpart (21) in its entirety.

SECTION 4. This act shall take effect on July 1, 1997, the public welfare requiring it and shall apply to all criminal gang offenses committed on or after such date.